United Nations CED/C/GAB/Q/1/Add.1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
7 August 2017
English
Original: French
English, French and Spanish only

Committee on Enforced Disappearances
Thirteenth session
4-15 September 2017
Item 8 of the provisional agenda
Consideration of reports of States parties to the Convention

List of issues in relation to the report submitted by Gabon under article 29, paragraph 1, of the Convention

Addendum

Replies of Gabon to the list of issues*

[Date received: 24 July 2017]

* This document is being issued without formal editing.

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I. General information

Reply to paragraph 1 of the list of issues

1. The specialist departments are currently studying recognition of the Committee's competence to receive and consider individual and inter-State communications.

Reply to paragraph 2 of the list of issues

2. The provisions of the Convention are currently not directly invoked before or applied by the courts or other competent authorities for purposes other than information. The courts and other competent authorities have not issued any decisions in which the provisions of the Convention have been applied and there is no cases law in which violations of the Convention have been identified.

Reply to paragraph 3 of the list of issues

3. The Government is supporting the reform of the National Commission on Human Rights in order to ensure that the latter is in full compliance with the Paris Principles so that it may be accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. It joined with the Commission and development partners in organizing a workshop on rebuilding the Commission. In October 2013, a petition jointly drafted with the l'Agence francophone des Commissions nationales des droits de l'homme was submitted to the Gabonese authorities, including the Economic and Social Council. This petition led to the Commission's current headquarters being made available. Generally speaking, the Commission monitors conditions of incarceration and custody on the premises of the police and the gendarmerie. It also organizes visits to the central prison and holds frequent meetings with the Ministry of Justice which is in charge of human rights and with development partners and civil society.

4. A road map was drawn up at the end of a workshop on rebuilding the Commission. Since December 2016 the implementation of the road map has led to the effective redrafting, in cooperation with the Council of State, of the text on the establishment and structure of the Commission. The text of the act is currently in the process of being adopted by the Upper Chamber of Parliament.

5. In accordance with Decree No. 000102/PR/MDHLCCLCI of 15 January 2007 on the establishment and organization of the National Committee for the Drafting of Human Rights Reports, the national meeting for feedback and approval of the report was attended by representatives of ministerial departments and civil society organizations, Members of Parliament and representatives of the Commission. The Commission did not adopt a public position on the report. No national mechanism for the prevention of torture has yet been set up. The relevant text is being considered by the Council of State.

II. Definition and criminalization of enforced disappearance (arts. 1-7)

Reply to paragraph 4 of the list of issues

6. To the best of our knowledge, no allegations of enforced disappearance within the meaning of article 1 of the Convention have been brought to the courts' attention.

Reply to paragraph 5 of the list of issues

7. The revised Criminal Code, which is in the process of being adopted, defines and criminalizes enforced disappearance.

Reply to paragraph 7 of the list of issues

8. To date no complaints have been lodged regarding enforced disappearance within the meaning of article 2 of the Convention, or regarding cases of human trafficking that might fall under articles 2 and 3 of the Convention.

Reply to paragraph 9 of the list of issues

9. It must be noted that under the sacrosanct principle of the individualization of penalties in keeping with the offence, every person implicated in the commission of an offence is personally and criminally responsible for an act qualified as a crime or offence.

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

Reply to paragraph 11 of the list of issues

10. As a result of the reform of criminal law that is currently under way, the statute of limitations will not in fact apply to enforced disappearance as a crime against humanity, although the 20-year statutory limitation will apply to enforced disappearance defined as a separate offence.

11. In such cases, extradition procedures obey the general rules on extradition and international judicial cooperation.

Reply to paragraph 12 of the list of issues

12. The procedures and measures for promptly examining allegations of enforced disappearance are based on the techniques and means of ordinary criminal investigations for the purposes of identifying and searching for a missing person, the use of all modern and traditional means, and the gathering of all clues or material evidence likely to shed light on the destination or location of the missing person.

13. The criminal investigation department may indeed open an investigation as soon as it is informed of an act qualified as an offence or a crime which it is responsible for reporting by any appropriate means to the public prosecutor.

14. The public prosecutor is the judicial authority competent to supervise custodial measures applied by the military authorities, including the military intelligence service of the army, when taking part in a criminal investigation.

15. The same authorities (the criminal investigation department acting on the instructions of the public prosecutor) are in charge of investigating cases of enforced disappearance committed by members of the armed forces, including cases are committed against other military personnel.

IV. Measures to prevent enforced disappearances (arts. 16-23)

Reply to paragraph 16 of the list of issues

16. There are no provisions of domestic law that expressly prohibit secret or unofficial detention.

17. The law, to wit the Code of Criminal Procedure, authorizes the public prosecutor inter alia to make unannounced visits to places of deprivation of liberty.

18. The main task of the National Commission on Human Rights is to visit places of deprivation of liberty. On the other hand, non-governmental organizations may visit persons who have been deprived of their liberty and interact with them only in rooms set aside for that purpose.

Reply to paragraph 17 of the list of issues

19. Under the provisions of articles 50 et seq. on police custody, an officer of the criminal investigation department who takes an accused person into custody is under a legal obligation to allow that person to have access to a lawyer of his or her choice. Police custody is limited to 48 hours, but it may be extended at the express request of the public prosecutor. However, police custody may last for eight days in places which are a long way from courts. In the latter case, an officer of the criminal investigation department is authorized to issue an order of committal to prison for the needs of the investigation. During the period of police custody or deprivation of liberty, the law lays down measures to guarantee the fundamental rights of the accused person, or the person in custody, who is entitled to be visited by a family member or friend, to be examined by a doctor who can determine whether the accused is fit to remain in custody, to inform a family member that he or she has been arrested and to communicate with his or her lawyer for no more than one hour.

Reply to paragraph 18 of the list of issues

20. During the unrest on 31 August 2016 the judicial and police authorities were not informed of any complaints or disappearances leading them to take measures to search for persons who had gone missing after the riots following the presidential election.

21. On the other hand, of the 800 persons who were arrested:

- 300 were automatically released because no charge could be brought against them;
- 500 were brought before the public prosecutor who immediately released 448 of them because there were insufficient grounds to charge them;
- 27 were referred to the criminal court under the *flagrante delicto* procedure to answer charges of pillaging, destruction of public or private property, armed or unarmed assembly, which are offences covered by articles 79 et seq. and 333 of the Criminal Code. During these proceedings 18 persons received prison sentences ranging from two to six months and nine persons were discharged.

22. The persons who were convicted have now been released after serving their sentences.

- 25 persons were brought before an investigating judge after the opening of an investigation into arson, conspiracy to commit an offence, pillaging, destruction of property, instigation to commit a crime and incitement to public disorder, sedition, violence and assault, which are punishable offences under articles 193, 48, 74 and 230 of the Criminal Code.

23. Only three of the accused are currently in detention while investigations proceed. The time limits for pretrial detention laid down in article 177-2 of the Code of Criminal Procedure are being observed.

24. During hearings in both *flagrante delicto* and other proceedings, the accused were assisted by lawyers, some of whom had been appointed by the court.

Reply to paragraph 19 of the list of issues

25. The military personnel or civilians responsible for law enforcement receive human rights training. We take note of the provisions of article 23 of the Convention and after enforced disappearance has been criminalized, the Government plans to ensure that training takes account of this.